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DEC 19 2005

In re Application of:
Eric Veignat et al.
Serial No.: 10/031,997
Filed: January 22, 2002
Attorney Docket No.: 17.0191

DECISION ON PETITION TO
WITHDRAW THE HOLDING
OF ABANDONMENT

This is a decision on the petition to withdraw the holding of abandonment under 37 C.F.R. § 1.181(a) filed via facsimile transmission on April 30, 2004. There is no fee for this petition.

The petition is **GRANTED**.

A final Office action was mailed on July 23, 2003. An after-final amendment was filed on September 22, 2003. An advisory action was mailed on October 7, 2003 indicating that the after-final amendment would not be entered because it raised new issues that would require further consideration and/or search. A Notice of Abandonment was mailed on April 19, 2004. Although the Notice of Abandonment indicates that the application was abandoned in view of applicant's failure to timely file a proper reply to the advisory action of October 7, 2003, it was actually held abandoned for failure to timely file a proper reply to the final Office action mailed on July 22, 2003.

A proper reply to a final rejection under 37 C.F.R. § 1.113 may only be either (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 C.F.R. § 1.114.

Petitioner asserts that a Request for Continued Examination (RCE) was timely filed in the United States Patent and Trademark Office (USPTO) on October 23, 2003. To support this assertion, petitioner has submitted a copy of the RCE, a copy of the required submission under 37 C.F.R. § 1.114 (an amendment), and a copy of a stamped return postcard which properly identifies and acknowledges receipt of the RCE and the amendment by the USPTO on October 23, 2003. The RCE authorizes the charging of the fee for the RCE and any fee relating to the amendment to a given Deposit Account.

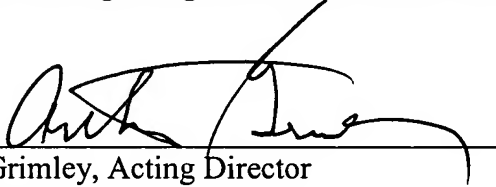
A review of the application file record reveals that the RCE and the amendment having been acknowledged as being received in the USPTO on October 23, 2003 are not of record in the application file and cannot be located. On the other hand, Office records indicates that the fee for the RCE was charged to the given Deposit Account.

In any case, M.P.E.P. § 503 states that a postcard receipt which itemizes and properly identifies the items which are being filed serves as *prima facie* evidence of receipt in the USPTO of all the items listed thereon on the date stamped thereon by the USPTO. Accordingly, it is concluded that the RCE and the amendment were timely received but lost after receipt thereof.

For the above stated reason, the petition is granted. The Notice of Abandonment mailed April 19, 2004 is hereby **VACATED** and the holding of abandonment is withdrawn.

The RCE and the amendment with the petition on October 30, 2004 will be processed by the Technology Center 2800 support staff and the examiner will be prepare an Office action responsive to the amendment.

Any inquiries regarding this decision should be directed to Edward Westin at (571) 272-1638.

A handwritten signature in black ink, appearing to read 'Arthur Grimley', is written over a horizontal line.

Arthur Grimley, Acting Director
Technology Center 2800
Semiconductors, Electrical and Optical
Systems and Components